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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,858	11/26/2002	Rollie Richard Herzog	9D-20014	3381

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EXAMINER

PERRIN, JOSEPH L

ART UNIT PAPER NUMBER

1746

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/065,858

Applicant(s)

HERZOG ET AL.

Examiner

Joseph L. Perrin, Ph.D.

Art Unit

1746

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

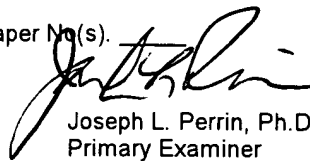
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).  
13. ☐ Other: \_\_\_\_\_.

  
Joseph L. Perrin, Ph.D.  
Primary Examiner  
Art Unit: 1746

Continuation of 11. does NOT place the application in condition for allowance because: the Examiner's position is maintained.

Regarding the language "predetermined" as pertaining to indefiniteness, the Examiner simply noted that such has been held to be indefinite to further illustrate the point that "predetermined" is very broad and sometimes vague language readable on any number determined beforehand. Thus, since no indefiniteness rejection was made arguments with respect to indefiniteness are considered moot.

Regarding the rejection of claims 1-5, 8-9, 13-15 & 17 over CHAMBERLIN, applicant argues that CHAMBERLIN does not describe or suggest a second predetermined speed. The Examiner strongly disagrees for at least reasons of record. As previously indicated, CHAMBERLIN explicitly discloses locking at or above preselected RPM speeds of 20 RPM and 100 RPM and unlocking when the speed falls below the explicitly disclosed speeds. Clearly, THE speed at which falls below the explicitly disclosed speed is constant and consistently the same speed BELOW THE PREDETERMINED SPEED, and thus, would be at once envisaged by one having ordinary skill in the art as being a "predetermined" speed. Applicant's broadly claimed "second predetermined speed" reads on each and every speed below the first determined speed. For example, if applicant's first predetermined speed is 100 RPM, applicant's second predetermined speed may be any speed from about 0-99.99+ RPM. Comparing this to CHAMBERLIN, the Examiner maintains the position that one having ordinary skill in the art would at once envisage THE speed below the predetermined speed (i.e. 100 RPM) would also be determined beforehand as the RPM below 100 RPM. Clearly, the broad nature of applicant's claim and the clear overlap in range renders the claim anticipated over CHAMBERLIN.

Applicant's arguments with respect to the rejection of claims 10-12 & 16 under 35 U.S.C. §103(a) over CHAMBERLIN in view of HUANG or HARWOOD have been fully considered but they are not persuasive. Applicant argues that HUANG teaches away from using a Hall effect sensor, apparently relying on the use of a Hall effect sensor as a point of novelty. This is not persuasive because a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). The prior art is replete with the conventional use of Hall effect sensors in sensing rotary speed of rotary motors, for instance a brushless DC motor, at applicant's time of invention. Specifically, HUANG discloses the conventional use of Hall effect sensors, stating that "[c]onventional commercial brushless DC motors use Hall-effect (magnetically operated) sensors" (col. 1, line 12 et seq.). Moreover, HUANG discloses a "virtual Hall sensor" or a modified Hall sensor with added benefits. The position is taken that it would be well within the knowledge of ordinary skill in view of the teachings of HUANG to provide a conventional brushless DC motor with a Hall effect sensor or a "virtual" Hall effect sensor to provide the well known advantages associated with such conventional sensing means. Furthermore, there would be a reasonable expectation of success in using the teachings of HUANG of applying such conventional sensing means to sense rotary speed in a rotary motor using a brushless DC motor, for instance, in an appliance such as a washing machine. Even if, arguendo, one were to construe HUANG as teaching away from using a Hall effect sensor, this does not negate the fact that HUANG provides a teaching of traditional Hall effect sensors as being conventional in sensing rotary speed of rotary motors in commercial brushless DC motors.

In response to applicant's argument that "Chamberlin and Huang teach away from their own combination", this is not persuasive for at least the reasons indicated above. Applicant's comparison of the spin speed sensor of Chamberlin and the conventional teaching of Hall effect sensors as a spin speed sensor of Huang is not understood with regard to a "teaching away" since both Chamberlin and Huang are directed to sensing spin speed in a rotary motor.

In response to applicant's arguments that claims 10-12 & 16 are not described or suggested by the references because claims 8 & 14, respectively, are not described or suggested by the references, this is not persuasive because 8 & 14 are anticipated by CHAMBERLIN as discussed above and recited in the previous rejection.